

R. GARVIN BERRY, JR.

IBLA 75-89

Decided January 9, 1975

Appeal from decision of the California State Office, Bureau of Land Management, rejecting oil and gas lease offer CA 384.

Reversed.

1. Naval Petroleum Reserves -- Oil and Gas Leases: Discretion to Lease  
-- Oil and Gas Leases: Lands Subject to

Where an oil and gas lease offer for public lands within one mile of the exterior boundaries of a naval petroleum reserve is rejected because the Department of the Navy recommends against the leasing of the land despite the Geological Survey's determination that operations on the subject land would not adversely affect the naval reserve through drainage from known productive horizons, the decision rejecting the lease offer will be reversed. The recommendations of the federal agency exercising jurisdiction over a naval petroleum reserve, while important, are not conclusive. The final determination rests with the Department, and where the Geological Survey after full consideration of pertinent technical considerations recommends leasing, a lease will issue.

APPEARANCES: R. Garvin Berry, Jr., pro se.

OPINION BY ADMINISTRATIVE JUDGE RITVO

R. Garvin Berry, Jr., has appealed from a decision of the California State Office, Bureau of Land Management (BLM), dated

July 17, 1974, which rejected his noncompetitive oil and gas lease offer, CA 384, on the grounds that the land lies within one mile of Naval Petroleum Reserve No. 2 and the Department of the Navy has recommended that the land should not be leased.

The Department of the Interior's policy concerning the issuance of oil and gas leases for lands within one mile of the exterior boundaries of a naval petroleum reserve is contained in 43 CFR 3101.1-1(a)(6), which provides:

\* \* \* No oil and gas lease will be issued for land within 1 mile of the exterior boundaries of a naval petroleum or a helium reserve, unless the land is being drained of its oil or gas deposits or helium content by wells on privately owned land or unless it is determined by the authorized officer, after consultation with the agency exercising jurisdiction over the reserve, that operations under such a lease will not adversely affect the reserve through drainage from known productive horizons.

Following receipt of appellant's offer to lease, the BLM requested reports from the Director of the Naval Petroleum and Oil Shale Reserves, Department of the Navy, and from the Oil and Gas Supervisor, Pacific Area, United States Geological Survey, Department of the Interior. The Navy informed the BLM that the lands in the subject offer were situated within one mile of Naval Petroleum Reserve No. 2, and recommended that they not be leased for the following reasons:

It is my preference that these lands not be offered for oil and gas leasing. Based on geological information presently available relating to the area under consideration, it is not possible to state that operations under such a lease will not adversely affect the adjacent Naval Petroleum Reserves through drainage from productive oil and gas horizons. Our information indicates the possibility that formations underlying the Petroleum Reserves deposits may contain oil or gas in commercial quantities.

In addition, the Navy pointed out that any action which would increase the likelihood of drainage from reserves would be inconsistent with existing laws requiring the maintenance of the reserves for production during times of national emergency.

Following receipt of the Navy's recommendation, the BLM received a report from the Geological Survey. After analyzing

past drilling activities in the area and the geologic relationship between the subject land and the Naval Reserve, the Geological Survey concluded the following:

[T]he [subject] land is not now being drained from wells on privately owned land.

Based on available evidence concerning known productive horizons and taking into account the down-dip structural position of the subject land, the lease if issued would not adversely affect the Reserve through drainage from productive horizons.

The Geological Survey recommended that the lease be issued.

The BLM transmitted a copy of the Navy report to the Geological Survey in order that the Navy's point of view could be considered, and requested a further report based upon an examination of the reasons given by the Navy for its objection to the issuance of a lease. Following a second review of available evidence, the Geological Survey again concluded that operations on the subject land would not adversely affect the Reserve through drainage from productive horizons. The Geological Survey noted the following:

Inside Naval Petroleum Reserve No. 2, all of the private land and all of the Navy land except for a few isolated parcels is leased, and most of the private and public land surrounding NPR #2 is leased. There are no unusual restrictions on drilling new wells or producing oil from existing wells in any of these leases. For this reason, it is unlikely that a successful well on this parcel (should it be leased) or on other Federal lands either in the Reserve or in the area surrounding the Reserve would drain oil from the Government land in the area. \* \* \*

The BLM transmitted copies of the Geological Survey's reports to the Navy requesting a further report in light of the Survey's favorable recommendation. The Navy reiterated its objection to leasing the subject land for the following reason:

As pointed out in your letter most of the Navy lands in the Reserve are now under lease. However, the oil and gas lease under question, CA 384, is contiguous to NPR-2 and is one quarter mile from \* \* \* unleased Navy Reserve land. Thus, there is danger of drainage from the Reserve. \* \* \*

In its decision of July 17, 1974, rejecting appellant's oil and gas lease offer, the BLM informed appellant that the Department of the Navy had objected to the issuance of the lease while being fully aware of the favorable report developed by the Geological Survey. The decision concluded as follows:

Since the Department of the Navy, after fully considering the report made by the United States Geological Survey, still holds there is the possibility of drainage from the productive zones of Petroleum Reserve No. 2, it is hereby determined that it has not been conclusively established that operations under lease CA 384, if issued, will not adversely affect the reserve through drainage of its productive zones.

In view of the above determination, regulation 43 CFR 3101.1-1(a)(6) requires that offer CA 384 be rejected. \* \* \*

In his Statement of Reasons on Appeal, appellant contends that geologic information on the subject land and the Geological Survey's favorable report demonstrate that production on the subject land would not drain any formations in Naval Reserve No. 2.

The issuance of oil and gas leases is committed to the discretion of the Secretary of the Interior. Udall v. Tallman, 380 U.S. 1, 4 (1965). It has long been the policy of the Department to administer its discretionary authority by restricting the issuance of oil and gas leases on lands adjacent to naval petroleum reserves where operations under the lease would adversely affect the reserve through drainage from known productive horizons. 43 CFR 3101.1-1(a)(6). Douglas M. Gall, 13 IBLA 117 (1973); Albert P. Mickunas, 12 IBLA 375 (1973); Robert Kamon, A-30732 (September 13, 1968); Adrian R. Boland, A-30773 (September 12, 1968); Halvor F. Holbeck, A-29104 (January 14, 1963); Charles L. Van Wert, A-24067 (January 18, 1949); Webster v. Clark, A-24144 (July 24, 1945).

In each of the cases cited above, the appellants did not persuasively show the existence of either of the conditions set out in the regulation (or of another which is not involved in this appeal). Furthermore, in each instance the Geological Survey concurred with the conclusions of the Department of the Navy that the geologic information indicated that operations under the leases could adversely affect the reserves through drainage from known productive horizons. Accordingly, the offers to lease were rejected.

The circumstances of the present case are quite different. The Geological Survey after a thorough analysis of the geologic evidence and consideration of the Navy's recommendations twice concluded that operations on the subject land would not adversely affect the reserve through drainage from known productive horizons, and twice recommended that the lease be issued.

[1] In its decision of July 17, 1974, the BLM determined that, given the Navy's negative recommendation, the lease offer had to be rejected, despite the favorable reports developed by the Geological Survey. While the recommendations of the federal agency exercising jurisdiction over a naval petroleum reserve adjacent to public lands are undoubtedly important in determining whether a lease should be issued on the public lands, they are not conclusive. See Carolyn S. Edwards, 14 IBLA 141, 143 (1974). Although the Department gives careful consideration to the recommendations of the Navy, the final determination to lease or not to lease public lands within one mile of a naval petroleum reserve is properly made by this Department. See W. T. Stalls, 18 IBLA 34, 35 (1974); W. T. Stalls, 17 IBLA 175, 177 (1974); Nevada Flyers, 10 IBLA 311, 313 (1973); Duncan Miller, 6 IBLA 216, 79 I.D. 416 (1972).

The reports developed by the Geological Survey persuasively show that operations on the subject land would not adversely affect the naval reserve [\*9] through drainage from known productive horizons. We note that the reports submitted by the Navy rebutting the Geological Survey's determination are somewhat conclusory in nature. They make reference to "geological information presently available relating to the area under consideration" and facts indicating "danger of drainage from the Reserve." Specific geologic information supporting the Navy's position is not offered in the reports. As the Board pointed out in Carolyn S. Edwards, *supra*, an agency's general conclusory recommendations will be given less weight by the Department than recommendations supported by background material and other data indicating the reasons for the recommendation. Accordingly, the decision below is reversed.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is set aside and the case is remanded to the BLM for action consistent with the views expressed herein.

Martin Ritvo  
Administrative Judge

We concur:

Edward W. Stuebing  
Administrative Judge

Frederick Fishman  
Administrative Judge.

